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## **THE REVISION OF THE UKRAINE'S OBLIGATIONS UNDER INTERNATIONAL LAW IN THE SPHERE OF ANIMAL WELFARE AND PROTECTION OF ANIMALS FROM CRUELTY**

The article contains an analysis of the Ukraine's international obligations under international law in the sphere of animal welfare and protection of animals from cruelty. The research deals with comparative analysis of the Law of Ukraine "On the Protection of animals from cruelty" and European Convention for the protection of pet animals. The adoption of the mentioned Law and signing and ratification of the Convention formed a new legal institute associated with animal welfare and protection of animals from cruelty. But the Ukrainian legislation still requires further improvement and bringing the legislation in compliance with European standards.

**Key words:** animal welfare, European Convention for the protection of pet animals, Law of Ukraine "On the protection of animals from cruelty", international standards.

European vector is the prior direction of Ukraine's international cooperation. One of the important steps within this direction was the Ukraine's entering to the Council of Europe. In the framework of membership in Council of Europe Ukraine has taken a number of obligations, which provide the overcoming of specific problems or create a new object of legal regulation. This led to the need of bringing of the all Ukrainian legislation to the accordance with European standards. The provisions of the Council's of Europe in the sphere of animal welfare and protection of animals from cruelty were not an exception from that.

The bases for providing of animal welfare and protection of animals from cruelty in frames of Council of Europe are European Convention for the Protection of Animals during International Transport 1968<sup>1</sup> (revised in 2003<sup>2</sup>), European Convention for the Protection of Animals kept for farm purposes 1976<sup>3</sup>, European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes<sup>4</sup>, European Convention for the Protection of Pet Animals 1987<sup>5</sup>. Among this Conventions Ukraine signed (July, 5, 2011) and ratified (September, 18, 2013; entered into force November, 1, 2013)<sup>6</sup> only European Convention for the Protection of Pet Animals. Despite the significant number of participants of the Convention, Ukraine is still one of the few post-Soviet states-participants of this Convention. The ratification of the Convention allowed significantly to bring together national legislation of Ukraine and legislation of Council of Europe in this sphere; the ratification of the Convention demonstrated the Ukraine's aim to keep European standards not only in the sphere of human rights but also in the sphere of

<sup>1</sup> European Convention for the Protection of Animals during International Transport (adopted 13 December 1968, entered into force 20 February 1971) CETS No. 065 <<http://conventions.coe.int/Treaty/en/Treaties/Html/065.htm>> (2015, March, 21).

<sup>2</sup> European Convention for the Protection of Animals during International Transport (Revised) (adopted 6 November 2003, entered into force 01 March 2006) CETS No. 193 <<http://conventions.coe.int/Treaty/en/Treaties/Html/193.htm>> (2015, March, 21).

<sup>3</sup> European Convention for the Protection of Animals kept for Farming Purposes (adopted 10 March 1976, entered into force 10 September 1978) CETS No.: 087 <<http://conventions.coe.int/Treaty/en/Treaties/Html/087.htm>> (2015, March, 21).

<sup>4</sup> European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (adopted 18 March 1986, entered into force 1 January 1991) <<http://conventions.coe.int/Treaty/en/Treaties/Html/123.htm>> (2015, March, 21).

<sup>5</sup> European Convention for the Protection of Pet Animals (adopted 13 November 1987, entered into force 1 May 1992) CETS No.: 125 <<http://conventions.coe.int/Treaty/en/Treaties/Html/125.htm>> (2015, March, 21).

<sup>6</sup> Закон про ратифікацію Європейської конвенції про захист домашніх тварин 2013 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/578-18>> (2015, March, 21).

the European standards for the treatment of animals. But, keeping of the European standards in marked spheres has common problems related not so much to the implementation of the legislation, but with the enforcement on the level of realization of the law, conditioned by institutional and mentality problems<sup>1</sup>.

In the moment of ratification Ukraine already had a special law aimed to the adjustment of the relations in the sphere of providing animal welfare and protection of animals from cruelty – Law of Ukraine “On the protection of animals from cruel treatment”<sup>2</sup>. But, despite that Ukraine became one of the last states-members of Council of Europe adopted its own legislative act on the providing animal welfare and protection of animals from cruelty<sup>3</sup>, for the post-Soviet states that was a very progressive event.<sup>4</sup> Secondly, importance of the relations in the field of providing of animal welfare and protection of animals from cruelty is one of the features of soviet mentality, legal and social reality<sup>5</sup>. For example, the single norm providing protection of animals from cruel treatment, which was included into the Criminal Code of the RSFSR only in 1988<sup>6</sup>, despite the fact that since 1924 there was Voluntary Society for the Protection of Animals<sup>7</sup> (it should be noted that before the October revolution there were societies for the protection of animals on the territory of Russian Empire). However, like other formal structures in a totalitarian society, this association of citizens had a little effect on legal regulation of providing animal welfare and protection of animals from cruel treatment.

Despite a very progressive character, the Law of Ukraine “On the protection of animals from cruel treatment” should be considered only as an intermediary transition from a full lack of regulative acts in the field of treatment of animals to bringing Ukrainian legislation closer to the European standards. Passing this

<sup>1</sup> In Ukraine, there is no systematic policy for the advancement of human rights and fundamental freedoms. Efforts by human rights organizations, individual departments and civil servants from the Interior Ministry and the Ministry of Justice, National Commission on Strengthening Democracy and the Rule of Law to improve the situation with the result of some progress, but the political crisis, the general attitude of political forces for human rights as something secondary and comparatively insignificant political expediency do not give to achieve systemic change for the better (Експертні оцінки дотримання прав людини в Україні

<[http://www.dif.org.ua/ua/archive/press\\_releases\\_archive/ekspertnyudini-v-ukraini-.htm](http://www.dif.org.ua/ua/archive/press_releases_archive/ekspertnyudini-v-ukraini-.htm)> (2015, March, 21)); in the sphere of animal welfare and protection of them from cruel treatment: today Ukraine has a catastrophic situation in the sphere of the protection of animals from cruel treatment and this tendency is still strengthening. The analysis of the situation shows that individuals, groups of people, social and charitable organizations doesn't have coordinated actions, and state does not support, does not develop the activity in this direction. As a result there is a declining of moral principles of the society in the part of treatment with animals. The danger of this crime is that cruelty manifested on animal becomes the norm of behavior, applies to relationships with people playing a negative role in educating young people. The subjects of crime are animals. (Що робить Україна в сфері захисту тварин.

<<http://azou.org.ua/index.php/members/12-kspa>> (2015, March, 21)). In particular, numerous cases of cruel treatment with wild animals, shooting and poisoning of stray animals in the cities, and so on. The most recent example: in the animal shelter in Kyiv April 12, 2015 a fire killed 70 animals; currently the investigation of this case is provided by law enforcement agencies. To prevent these crimes in Ukraine it is planned to create environmental police which should deal with animal protection in the state. (В Україні може з'явитися екологічна поліція (2015).

<[http://www.ukrinform.ua/ukr/news/v\\_ukraini\\_moge\\_zyavitisya\\_ekologichna\\_politsiya\\_2038332](http://www.ukrinform.ua/ukr/news/v_ukraini_moge_zyavitisya_ekologichna_politsiya_2038332)> (2015, March, 31); Назаренко, В. (2015). Служба порятунку... природи. *День* (22.04.2015).

<<http://m.day.kiev.ua/uk/article/cuspilstvo/sluzhba-poryatunku-pryrody>> (2015, April, 22).

Also, T. R. Korotkyi underlines the need to involve lawyers into the animal protect movement in Ukraine, especially in the field of international law that would create a legal prerequisite for the promotion of the humane treatment of animals, formation of legal thinking and legal culture that would counteract cruel treatment with animals. (Короткий, Т.Р. (2013). Организационно-правовые вопросы защиты животных в Украине: роль юристов в институционализации движения по защите животных. *Український часопис міжнародного права. Спец. вип.: Міжнародно-правові стандарти поводження з тваринами та їх захисту і практика України*, 33-39.

<sup>2</sup> Закон про захист тварин від жорстокого поводження 2006 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/3447-15>> (2015, March, 21).

<sup>3</sup> National Animal Welfare Legislation. *European enforcement network of animal welfare lawyers and commissioners*. <<http://lawyersforanimalprotection.eu/national-animal-welfare-legislation>> (2015, March, 21).

<sup>4</sup> Жорстокому поводженню з тваринами в Україні покладено край. *РБК-Україна*. <[http://www.rbc.ua/ukr/analytics/zhestokomu\\_obrashcheniyu\\_s\\_zhivotnymi\\_v\\_ukraine\\_polozen\\_konets\\_1142326686](http://www.rbc.ua/ukr/analytics/zhestokomu_obrashcheniyu_s_zhivotnymi_v_ukraine_polozen_konets_1142326686)> (2015, March, 21).

<sup>5</sup> Боровик, М.А., Михель, Д.В. (2010). Движения по защите прав животных: история, политика, практика. *Журнал исследований социальной политики*, 8, 2, 250-251.

<sup>6</sup> Уголовный кодекс РСФСР 1960 г., ст. 230-1, гл. 10 (1988). *Викитека*. <[https://ru.wikisource.org/wiki/Уголовный\\_кодекс\\_РСФСР\\_1960\\_года/Особенная\\_часть.\\_Глава\\_10](https://ru.wikisource.org/wiki/Уголовный_кодекс_РСФСР_1960_года/Особенная_часть._Глава_10)> (2015, March, 21).

<sup>7</sup> История ВООП. *Urmature.ru*. <<http://urnature.ru/histoty.html>> (2015, March, 21).

Law reflected a qualitative shift when the problem of providing of animal welfare and their protection from cruel treatment moved to the category of socially important problems. But the effectiveness of this Law, as the entire body of legislation in the field of providing animal welfare and protection of animals from cruel treatment, is not high enough<sup>1</sup>. The reason is a traditional on the post-Soviet territory legal nihilism<sup>2</sup>, assignment of the sphere of animal welfare and protection of animals from cruel treatment to the secondary problems, especially from the point of view of state governing organs and law enforcement agencies<sup>3</sup>, as well as not always the highest quality of legal acts in marked area<sup>4</sup>. Though, it should be noted, that the biggest problems of the application of the Law, as outlined above, are in the area of enforcement.

In this article we set ourselves the goal to determine how the provisions of the Law of Ukraine “On the protection of animals from cruel treatment” and other special normative legal acts of Ukraine<sup>5</sup> in the field of providing animal welfare and protection of animals from cruel treatment meet international obligations in the marked sphere, primarily the European Convention for the protection of Pet Animals. So far as a subject sphere of the Law is slightly wider than the subject of the legal regulation of the Convention (the Law directed to the providing the protection of animals from cruel treatment, as much as factually to the regulation of the treatment of animals, animals in a wide sense<sup>6</sup>), and Convention has a subject sphere only pet animals, we predominantly stop on questions connected with provisions of Ukrainian legislation dedicated to pet animals. It should be noted that the concept of pet animals in the Convention is wide and includes “any animals kept or intended to be kept by man in particular in his household for private enjoyment and companionship”<sup>7</sup>, which bears wider obligations for Ukraine under this Convention in relation to the subject of regulation on the protection of “pet animals” compared with a conception of this category in Law.

The analysis of the Law’s provisions brings us to conclusion about a complex approach to the

<sup>1</sup> Метельова, Т. (2013). Практика та результати зоозахисного руху в країнах ЦСЄ. *Віче*. <<http://www.viche.info/journal/3899>> (2015, March, 21).

<sup>2</sup> Чому догхантери вбивають собак. <<http://tsn.ua/ukrayina/chomu-doghanteri-vbivayut-sobak-strah-i-pomsta-zagiblih-kishok.html>> (2015, March, 21); В Одесі догхантери годують собак отруєним м’ясом і знімають на відео. <<http://ukr.obozrevatel.com/society/69382-v-odesi-doghanteri-goduyut-sobak-otrueanim-myasom-i-znimayut-na-video.html>> (2015, March, 21).

<sup>3</sup> Природоохоронна діяльність київської громади: особливості та характеристика. <<http://www.sos-animals.info/ru/legalclinic/journalism/317-2010-10-04-19-35-32.html>> (2015, March, 21); «Догхантер» і місцева влада: союзники назавжди. <<http://chasdiy.org/dog-ukraine/>> (2015, March, 21).

<sup>4</sup> Назаренко, В. (2015) Служба порятунку... природи. *День* (22.04.2015). <<http://m.day.kiev.ua/uk/article/cuspilstvo/sluzhba-poryatunku-pryrody>> (2015, April, 22); Короткий, Т.Р. (2013). Организационно-правовые вопросы защиты животных в Украине: роль юристов в институционализации движения по защите животных. *Український часопис міжнародного права. Спец. вип.: Міжнародно-правові стандарти поводження з тваринами та їх захисту і практика України*, 33-39.

<sup>5</sup> Закон про захист тварин від жорстокого поводження 2006 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/3447-15>> (2015, March, 21); Закон про Червону книгу України 2002 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon0.rada.gov.ua/laws/show/3055-14>>; Закон про тваринний світ 2001 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon0.rada.gov.ua/laws/show/2894-14>>; Закон про мисливське господарство та полювання 2000 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/1478-14>>; Закон про ветеринарну медицину 1992 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon3.rada.gov.ua/laws/show/2498-12>>; Закон про природно-заповідний фонд 1992 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon0.rada.gov.ua/laws/show/2456-12>>.

<sup>6</sup> In a wide sense the Law understands the term “animals” as biological objects related to fauna: agricultural, domestic, wild, including domestic and wild bird, fur, laboratory, zoo, circus; in the narrow sense, especially pets - dogs, cats and other animals for a long historical period traditionally kept and bred by human and animal species or animals artificially bred by human to meet the aesthetic needs and requirements in communication, which usually no viable wild populations consist of individuals with similar morphological features, and there are long in their natural habitat; wild animals - animals whose natural habitat is the wild nature, including those which are in captivity or semi-captivity; agricultural animals - animals kept and bred by man for food and raw materials of animal origin; homeless animals - pets left unattended rights or semi-formed group, able to multiply out of control rights; experimental animals - animals used for scientific experiments, experiments.

<sup>7</sup> European Convention for the Protection of Pet Animals (adopted 13 November 1987, entered into force 1 May 1992) CETS No.: 125 <<http://conventions.coe.int/Treaty/en/Treaties/Html/125.htm>> (2015, March, 21).

problem of a cruel treatment of animals, systematic characteristics of norms and mechanism of their realization. Factually with passing a Law in Ukraine finally formed a new legal institute aimed to the providing of animal welfare and protection of them from cruel treatment. Earlier, these relations were governed by separate rules of administrative and partly in terms of criminal law relating to responsibility for the abuse of animals and sanitary requirements for the keeping of domestic animals. As for the animals that are not related to the home, and in situations of natural freedom, regulation of their treatment carried out by laws of Ukraine "On Wildlife", "On a Red book of Ukraine", "On a veterinary medicine", "On the nature reserve fund of Ukraine"<sup>1</sup>.

At the moment of preparing of this article the second reading of the draft law of Ukraine "On amendments to some legislative acts of Ukraine concerning the protection of biodiversity" passed. It provides changes in the listed above acts, such as prohibiting the use of bears and wolves on the hunting testing stations, prohibiting the use of animals in traveling zoos, menageries, exhibitions of wild animals, as well as prohibiting of dolphinariums without natural seawater<sup>2</sup>. This draft law passed by Verkhovna Rada of Ukraine on the 9<sup>th</sup> of April, 2015, and now is waiting for President's sign (directed to signing on the 20<sup>th</sup> of April 2015)<sup>3</sup>.

It should be mentioned that the doctrine of Ukrainian environmental law didn't recognize (or with a very conservative point of view recognize) the sphere of legal regulation of providing of animal welfare and protection of animals from cruel treatment in the frames of this branch of law. This is evidenced by the complete absence in both textbooks and monographs on environmental law<sup>4</sup>, as well as reference to the scientific specialty<sup>5</sup>, of the problems of animal welfare and protection them from cruel treatment. With passing the Law of Ukraine "On the protection of animals from cruel treatment", and with ratification of Convention, it became possible to talk about a complex legal institution, which belongs to the Environmental Law.

In a whole the legislation of Ukraine in the field of animal welfare and protection of animals from cruel treatment has nearly ten legal normative acts<sup>6</sup>. In the context of ratification of European Convention

<sup>1</sup> Закон про Червону книгу України 2002 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/3055-14>>; Закон про тваринний світ 2001 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/2894-14>>; Закон про мисливське господарство та полювання 2000 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/1478-14>>; Закон про ветеринарну медицину 1992 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/2498-12>>; Закон про природно-заповідний фонд 1992 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/2456-12>>.

<sup>2</sup> Проект Закону про внесення змін до деяких законодавчих актів України (щодо охорони біорізноманіття) 2015 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52542&pf35401=317587>> (2015, April, 21).

<sup>3</sup> Проект Закону про внесення змін до деяких законодавчих актів України (щодо охорони біорізноманіття) (картка законопроекту) 2015 (Верховна Рада України). Офіційний сайт Верховної Ради України. <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=52542](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52542)> (2015, April, 21).

<sup>4</sup> Дідик, В.Г. (2007). *Правове регулювання відносин в сфері довкілля в Європейському Союзі та в Україні*. Київ; Микієвич, М.М., Андрусевич, Н.І., Будякова, Т.О. (2004). *Європейське право навколишнього середовища: навч. посіб.* Львів; Лозо, В.І. (2008). *Правовые основы экологической стратегии Европейского Союза: концепция, программное обеспечение, систематизация и комментарий действующего законодательства ЕС*: монография. Харьков: Право.

<sup>5</sup> Каракаш, І.І., Короткий, Т.Р., Хендель, Н.В. (2014). *Довідник захищених дисертацій на здобуття наукового ступеня кандидата і доктора юридичних наук за спеціальністю 12.00.06 "Земельне право; аграрне право; екологічне право; природоресурсне право" в Україні (1991-2013 рр.)*. Одеса: Фенікс.

<sup>6</sup> Закон про захист тварин від жорстокого поводження 2006 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/3447-15>> (2015, March, 21); Закон про Червону книгу України 2002 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/3055-14>> (2015, March, 21); Закон про тваринний світ 2001 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/2894-14>> (2015, March, 21); Закон про мисливське господарство та полювання 2000 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/1478-14>>; Закон про ветеринарну медицину 1992 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/2498-12>>; Закон про природно-заповідний фонд 1992 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/2456-12>>.

for the protection of Pet Animals special attention should be paid exactly the Law of Ukraine "On the protection of animals from cruel treatment"<sup>1</sup> which is the main legislative act of Ukraine concerning treatment of animals.

The logic structure of both acts is similar – Convention and Law are built according the system "principles of treatment of animals – conditions of keeping of animals – competent bodies".

First articles of both acts contain the definitions of the terms (art. 1 of the Convention, art. 1 of the Law), scope spheres and mechanisms of implementation – art. 2 and art. 3 respectively. The principle of not causing unnecessary pain, suffering or injury to an animal (Art. 3 of the Convention) correspond to the provisions of Article 4 of the Law of Ukraine "On protection of animals from abuse", which shows the basic principles of treatment of animals. This provision of the Convention was the basis for adoption of a number of European countries' Animal welfare acts. The Law of Ukraine defines the basic principle - the existence of animals' natural rights. This principle is the basis for protection of animals from suffering and death as a result of cruel treatment. However, if the Convention provides for only two main principles of treatment of animals – not causing unnecessary pain, suffering or distress and non-abandoning a pet animal, - then the Law of Ukraine already details these principles and declares that the treatment of animals is based on six principles: prevention of moral harm to human as a result of cruelty to animals; providing the living conditions for animals, appropriate to their specific features; cessation of ownership of the animal due to the cruel treatment; prohibition of cruel treatment of animals; establishment of responsibility for the cruel treatment of animals; animal welfare and handling without pursuit as a target of harm to others and to the animal. It should be noted that the principles of treatment of animals specified in the law, although expanding their scope, however, is too fragmented in the subject, as well as tends to anthropocentrism that in the context of the ratification of the Convention is unacceptable because its concept provides nature-centric trends.

The Convention marks, that any person who keeps a pet animal or who has agreed to look after it, shall be responsible for its health and welfare with considering of nature needs of animal (art. 4). Article 7 of the Law of Ukraine, which specifies the general rules for the keeping of animals excluding cruelty, corresponds mentioned article of the Convention. However, Article 8 of the Law of Ukraine also considers an option of keeping of wild animals in captivity, without detailing how the keeping of wild animals is regulated, conditions of their detention and falling into captivity, captive use (for example, in zoos). The Convention, in view of the fact, that its subject of regulation is aimed solely on domestic animals, does not consider this issue.

Article 6 of the Convention contains provisions on age limits for the purchase of animals - no pet animal shall be sold to persons under the age of sixteen without the express consent of their parents or other persons exercising parental responsibilities. The similar norm in Ukrainian legislation is contained in Civil Code of Ukraine (art. 32, 34), but Ukrainian legislation provides independent purchasing of animal only from 18, from 14 till 18 – with a written consent of parents or other persons exercising parental responsibilities, so, with the entry into force of the Convention, there is a certain conflict of norms of the international treaty (the Convention) and civil legislation of Ukraine regarding determination of age limits for the purchasing of the animal. Article 12 of the Law of Ukraine contains the clause about the possibility of annulment of transactions concluded in respect of the animal by a person under the age of 18 without parental consent of the person or other persons exercising parental responsibilities.

Articles 7 - 9 of the European Convention for the Protection of Pet Animals contain provisions on the conditions of training, commercial breeding and trade of animals, animal the establishment of shelters, as well as the use of animals in advertising, entertainment and similar activities. Law of Ukraine on protection of animals from cruel treatment in more detail and clearly defines the conditions of keeping of animals, it takes into account not only requirements of the above actions, but also provides provisions on veterinary care of animals, transport (Articles 10, 11). The conditions of participation of animals in entertainment and other activities laid down in Article 25 of the Law of Ukraine "On protection of animals from cruel treatment"; these provisions are similar to standards of the Convention.

The Law of Ukraine "On protection of animals from cruel treatment" also includes rules on the features of the ownership of animals and other proprietary rights, and terms and conditions, in which animals are the subject of (Article 12, 13). Of course, the evaluation of this rule depends on the way in

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<sup>1</sup> Закон про захист тварин від жорстокого поводження 2006 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/3447-15>> (2015, March, 21).

which regard the status of the animal - or as beings with their own rights, or as a thing. It should be noted that under Article 180 of the Civil Code of Ukraine<sup>1</sup> animals are covered by the legal regime of things. The Convention is not directly indicating its naturecentrism, while the Ukrainian law on the treatment of animals is anthropocentric.

Article 15 of the Law of Ukraine "On Protection animals from cruel treatment" defines the conditions for the establishment and functioning of animal shelters, and directly corresponds to Article 8 of the European Convention for the Protection of Pet Animals in the part, which contains a provision on the opening of shelters for animals. However, if the Convention expressly refers to the procedure of opening an animal shelter, shelter activities, monitoring of the activities of a shelter, the Act only refers to the possibility of establishing a shelter for animals and subjects having this right, the procedure for financing shelters for animals, but does not indicate bodies authorized to monitor the activities of shelters. In 2010, the State Committee of Veterinary Medicine of Ukraine approved the Regulations on animal shelter<sup>2</sup>. This sub-legislative normative act provides overall regulation of the order of establishment of a shelter, defines some rules of keeping animals at the shelter, rules for veterinarian surgery (for example, castration, euthanasia in case of detection of especially dangerous infectious diseases, serious injuries and injuries incompatible with life, incurable diseases or other grounds for its holding). However, if to consider the experience of European regulatory issues related to the treatment of animals, the Regulation must be supplemented by the standards of keeping animals in shelters, of quarantine, of keeping of homeless animals in shelters, veterinary care for the animals.

Article 9 of the European Convention for the Protection of Pet Animals specifies how to use animals in advertising, entertainment, exhibitions etc. Article 25 of the Law of Ukraine "On protection of animals from cruel treatment" regulates the conduct of activities and entertainment involving animals, with separate specifics of the prohibition of traveling menageries and zoos. Also, in the context of the ratification of the Convention, as well as previously mentioned draft law, those provisions will be slightly changed towards humanization of the treatment of animals.

Article 10 of the European Convention for the Protection of Pet Animals contains conditions for surgery over the animals, with focus mainly on so-called aesthetic surgery (e.g., the docking of tails; the cropping of ears; devocalization; declawing and defanging). Ukrainian legislation does not detail the procedure and conditions for operations on animals. With the entry into force of the Convention aesthetic operations practically stopped, that proved the priority of humane treatment of animals in comparison with bringing their appearance to the breed standards or preferences of persons having an animal<sup>3</sup>.

Article 11 of the European Convention for the Protection of Pet Animals prescribes the conditions which allows killing of animals and methods that are prohibited for use. This provision of the Convention is matched with an article 17 of the Law of Ukraine "On protection of animals from cruel treatment". Additionally, the Code of Administrative Offences (Art. 89)<sup>4</sup> and the Criminal Code (Art. 299)<sup>5</sup> establish responsibility for breaking the rules of killing animals. The law establishes for the first time the priority for Ukraine bio-sterilization, or biologically based methods for controlling the number of wild animals and animals not kept by man, but staying in a fully or partially created by human activity conditions. This provision laying the foundations for the development of humane programs to reduce the number of stray animals for settlements of Ukraine, however, despite the legal requirements, these programs adopted in a small number of settlements in Ukraine, and the rules on the prohibition of cruel killing of animals violated

<sup>1</sup> Цивільний кодекс, ст. 180, гл. 13 (2003) (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon2.rada.gov.ua/laws/show/435-15/page5>> (2015, March, 21).

<sup>2</sup> Наказ про затвердження Положення про притулок для тварин 2010 (Державний комітет ветеринарної медицини України). *Офіційний сайт Верховної Ради України*. <<http://zakon2.rada.gov.ua/laws/show/z1016-10>>.

<sup>3</sup> Українцям забороняють купірувати собакам вуха і хвости. <<http://sobytiya.tv/stories/4262/>> (2015, March, 21); Рада захистила права домашніх тварин: купірувати хвости і обрізати кігті заборонять. <<http://www.unian.ua/society/833681-rada-zahistila-prava-domashnih-tvarin-kupiruvati-hvosti-i-obrizati-kigti-zaboronyat.html>>.

<sup>4</sup> Кодекс України про адміністративні правопорушення, ст. 89, гл. 5 розділ 2 (2003) (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon0.rada.gov.ua/laws/show/80731-10/page4>> (2015, March, 21).

<sup>5</sup> Кримінальний кодекс України, ст. 299 розділ 12 (2001) (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon2.rada.gov.ua/laws/show/2341-14>> (2015, March, 21).

everywhere, including municipal services<sup>1</sup>, and remain unpunished<sup>2</sup>. The norm of the law on bio-sterilization does not carry an imperative character, and in most cases is ignored by local authorities.

Separately, the Convention provides measures for the protection of stray animals (Articles 12, 13). The provisions of these regulations contain the order of the measures to reduce the number of stray animals and conditions to ensure the identification of these animals. As for Ukrainian legislation regulating treatment of stray animals made on the basis of Art. 23 of the Law of Ukraine "On protection of animals from cruel treatment". This article is also widely violated, so we consider it necessary to amend the Act by including more explicit provisions on the regulation of the number and exclusion of cruel treatment of stray animals, e.g. the establishment of bio-sterilization, toughening of punishment for dog-hunters and so on. The draft law "On amendments to some legislative acts of Ukraine concerning the protection of biodiversity" provided the addition of Art. 23 by the prohibition of hunting on animals in the cities and other settlements from the pneumatic, fire, cold missile weapons, but this provision were deleted from the bill<sup>3</sup>.

At the same time, a significant number of cases of cruelty to animals associated with the activities of public and private enterprises engaged in the catch and regulation of the number of stray animals. Unfortunately, this kind of activity in the law is not included in the number of licenses (Art. 14 of the Law). Licensing, in our view, will ensure greater compliance with the requirements of legislation for the protection of animals from cruel treatment. In our opinion, the licensing of functions of regulating of the number of stray animals could be one of the most effective mechanisms for the prevention of cruel treatment.

The Convention also provides the information and educational programs that promote the growth of public awareness about the conditions of keeping of domestic animals (Article 14). Partially the provisions of Article 14 of the Convention correspond to Article 33 and 34 of the Law of Ukraine on the Protection of animals from cruel treatment (public scrutiny), but this provision is practically not used.

In view of the above mentioned, it should be pointed out the separate provisions of the Convention, requiring their implementation into the legislation of Ukraine, as well as other amendments to be made to the legislation of Ukraine:

1) To comply the Ukrainian legislation to European standards, first of all, it is necessary to change the legal status of animals from "things" to "sentient beings," as it stipulated by the Treaty on the Functioning of the European Union<sup>4</sup> and by many national acts of the European countries, that is, to move from anthropocentric approach in the legislation to naturecentric.

2) The Civil Code of Ukraine should directly fix the rate of the age limit for the acquisition of animals, thus will implement the provisions of Article 6 of the European Convention for the Protection of Pet Animals 1987.

3) Separately, in our view, it must be taken a legislative act such as the Regulation on commercial activities in relation to animals, or making the appropriate changes to the civil law. This procedure must be entered due to the existence of difficulties of regulation of breeding, trade and other commercial activities with animals. For today the legislation of Ukraine only specifies the general aspect of the treatment of animals, and then only from the point of view that animals are things.

4) The legislation of Ukraine is in dire need to adopt a single national legal act, which would provide the rules of treatment of stray animals, reducing their number, etc. Currently, the regulations containing such rules are accepted only at the level of regional centers and the activities of local authorities in this area

<sup>1</sup> Крeматорий на колесах. <<http://nedelya.net.ua/gazeta/sudba-cheloveka/krematoriy-na-kolesah/?mode=print>> (2015, March, 21); В Україні безпритульних собак і кішок спалюють живцем, готуючись до Євро-2012. <<http://www.newsru.ua/ukraine/16sep2011/zhvyodery.html>> (2015, March, 21).

<sup>2</sup> In recent years in Ukraine there is a negative practice of mass poisoning of stray dogs and outside the settlements - shooting. Recently it is marked a growing of movement of "dog-hunters". These illegal activities are still unpunished, except in some cases (case of Vedula-Polibin). «Тварини в місті». Як вирішити проблему безпритульних тварин? <<http://www.sos-animals.info/ru/history/historypress/205-l-r-.html>>; Правовой аспект отстрела собак: материалы форума. <<http://www.uahunter.com.ua/forum/pravovoy-aspekt-otstrela-brodyachih-sobak-t45551.html>>; Справа Ведули: більшість злочинів залишаються непоміченими. <<http://tyzhden.ua/Society/43547>>.

<sup>3</sup> Проект Закону про внесення змін до деяких законодавчих актів України (щодо охорони біорізноманіття) 2015 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52542&pf35401=317587>> (2015, April, 21).

<sup>4</sup> Consolidated version of the Treaty on the Functioning of the European Union, art. 13. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>> (2015, March, 21).



either inconsistent or non-existent, or very often reduced to inhumane mass killing of animals<sup>1</sup>.

5) The Ukrainian legislation should specify the procedure for informing the public about the activities of services and authorities in the sphere of protection of animals and the treatment of animals (Service for catching stray animals, shelters, veterinary offices), as well as government bodies, one way or another connected with the treatment of animals. Currently, informing is practically absent.

6) In international documents, as well as in the Ukrainian legislation, cruel treatment of animals includes only material composition of the offense (e.g. the victim animal). However we should not forget that together with causing harm to the animal may suffer harm to a person - namely, in Ukraine there is a tendency to propaganda of cruel treatment of animals (via the media, Internet and television). At the same time, the cruelty to animals often turns into cruelty to people, thereby increasing the level of crime and the level of social danger of the offenders. Thus, we consider it necessary to propose the inclusion into the concept of cruel treatment of animals also the promotion of this behavior, thereby to expand the subject of the offense and to make the punishment more tough.

Thus, on the one hand, we may note the positive trend of bringing the Ukrainian legislation in compliance with European standards in the field of animal welfare and protection of animals from cruel treatment. First of all, it is evident in the close correlation of the provisions of the European Convention for the Protection of Pet Animals and the Law of Ukraine "On protection of animals from cruel treatment," which, in fact, are complementary and interrelated acts.

However, on the other hand, it is necessary to speak about the presence of gaps in the regulation in the field of animal welfare and protection of animals from cruel treatment. The legislation on animals must provide complete coverage of both the scope and diversity of species - from keeping animals in the localities, measures to reduce the number of homeless animals by humane methods, control of breeding animals, to the use of animals in agriculture, experiments recreational activities, and so on. In our opinion, the system of legal acts to ensure animal welfare and protect them from cruel treatment should include laws "On protection of animals from cruel treatment", "On Pets", "On farm animals" and the system of bylaws. The basic principles of animal welfare lay down in Art. 3 of the European Convention for the Protection of Pet Animals should become the basic provisions for the system of legislation on animals.

Alongside with practical activities for the protection of animals in Ukraine it is important to improve the national legal acts in the field of animal welfare and protection from cruel treatment and to bring the national legislation in the field of animal welfare and protection of them from cruel treatment in compliance with European standards.

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<sup>1</sup> Зоозахист в законі. <<http://help-animal.ck.ua/submit-an-article/122-2014-04-22-15-20-28.html>> (2015, April, 22).



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